

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARY LALIBERTE, *et al.*,

Plaintiffs,

v.

QUANTA SERVICES, INC.,

Defendant.

Case No: 4:22-cv-03290 (AHB)

**DEFENDANT’S NOTICE OF
SUPPLEMENTAL AUTHORITY IN
ADVANCE OF THE HEARING ON
PLAINTIFFS’ MOTION FOR CLASS
CERTIFICATION**

In advance of the January 8, 2025, hearing on Plaintiffs’ Motion for Class Certification, Defendant provides the following supplemental and additional authority and evidence that bears on the arguments Plaintiffs make in their Reply in support of their Motion Class Certification (ECF No. 84):

1. Attached as Exhibit 1 is a recent decision from Judge Xavier Rodriguez in *Esquivel v. Whataburger Restaurants, LLC*, No. 24-CV-00310-XR (W.D. Tex. Nov. 8, 2024) dismissing similar ERISA breach of fiduciary duty claims for lack of Article III standing based on a covenant not to sue executed by the plaintiff in that case. The decision in *Esquivel* bears on the arguments raised by Plaintiffs in their Reply, ECF No. 84, at 6-8.

2. Attached as Exhibit 2 is a decision from the Fifth Circuit in *Stringer v. Whitley*, 942 F.3d 715 (5th Cir. 2019), wherein the Fifth Circuit held “[b]ecause injunctive and declaratory relief cannot conceivably remedy any past wrong, plaintiffs seeking injunctive and declaratory relief can satisfy the redressability requirement only by demonstrating a continuing injury or threatened future injury.” *Id.* at 720 (internal quotations and citations omitted). This decision bears on the arguments raised by Plaintiffs in their Reply, ECF No. 84, at 1.

3. Attached as Exhibit 3 are relevant pages of the backup materials from *Plaintiffs'* expert, Dr. Adam Werner, in which he calculates losses associated with the Plan's investments in the American Beacon Small Cap Value Fund ("American Beacon Fund") and the DFA International Small Cap Value Fund ("DFA Fund") that are Challenged Investments in Plaintiffs' Complaint. *See* Exhibit 3, Werner Backup Materials, Werner Dep. Ex. 3, at Tabs Beacon_Losses, DFA_Losses; *see also* Defendant's Brief in Opposition to Plaintiffs' Motion for Class Certification, ECF No. 77, at 7-8. Dr. Werner calculated that the Plan had no losses associated with both the American Beacon and DFA Funds. *See* Exhibit 3. Dr. Werner's backup materials reflect that this also was true as of September 30, 2022 (a few days after Plaintiffs filed their Complaint), with negative losses of \$1,681,728 for the American Beacon Fund and negative losses of \$164,714 for the DFA Fund. *Id.* This information bears on the arguments Plaintiffs make in their Reply, ECF No. 84, at 2.

Dated: December 30, 2024

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a true and correct copy of the foregoing document was served via the Court's ECF/CM e-filing system to all counsel of record on December 30, 2024.

/s/ Jeremy P. Blumenfeld
Jeremy P. Blumenfeld